

**STATE OF NEW HAMPSHIRE**  
**DEPARTMENT OF LABOR**  
**CONCORD, NEW HAMPSHIRE**



V

**Carroll County**

**DECISION OF THE HEARING OFFICER**

**Nature of Dispute:** RSA 275:43 I unpaid wages  
RSA 275:43 V unpaid vacation pay  
RSA 275:43 V unpaid sick pay

**Employer:** County of Carroll, 95 Water Village Rd, Ossipee, NH 03864

**Date of Hearing:** August 26, 2015

**Case No.:** 50616

**BACKGROUND AND STATEMENT OF THE ISSUES**

The claimant asserts she is due ninety-six (96) hours of vacation pay and ninety-six (96) hours of sick pay, or \$4,234.15, as she provided the appropriate notice period with her intent to resign.

The employer denies the claimant is due any vacation pay or sick pay under their written policy or past practice.

**FINDINGS OF FACT**

The claimant provided the employer with a written notice to resign on March 20, 2015, stating she planned that her last day would be March 27, 2015. She also provided this information verbally to the County Attorney, Attorney Dewhurst, along with an addendum that she would stay to transition her clients as long as needed. She also spoke with Ms. Newlin regarding her benefits upon separation. Wynette DeGrout called the claimant into a meeting with Attorney Dewhurst and terminated her employment on March 20, 2015.

RSA 275:49 III requires that the employer make available to employees in writing, or through a posted notice maintained in an accessible place, employment practices and policies regarding vacation pay and sick pay. Lab 803.03 (b) requires employers to provide his/her employees with a written or posted detailed description of employment practices and policies as they pertain to paid vacations, holidays, sick leave, bonuses, severance pay, personal days, payment of the employees expenses, pension and all other fringe benefits per RSA 275: 49. Lab 803.03 (f) (6) requires an employer maintain on file a signed copy of the notification.

The employer properly notified the claimant of the written policies as they pertain to vacation pay and sick pay.

The vacation pay policy reads, in relevant part, “\*\* Note – All employees leaving employment with the County with appropriate 2 weeks notice, will receive 100% of their accrued vacation time, paid out on the final check.”

The claimant did not provide the required two week notice in the written policy to receive payment of accrued vacation time. She provided a written notice of one week and a verbal notice of “as long as needed” to make the transition. The plain reading and meaning of her written and verbal notice do not meet the criteria in the written policy to provide a two weeks notice to receive her vacation pay. “As long as needed” could be conceivably be less than two weeks.

Therefore, the Hearing Officer finds the claimant failed to prove by a preponderance of the evidence she is due the claimed vacation pay under the written policy of the employer.

The sick pay policy reads, in relevant part, “Sick time will be paid, at the employee’s regular base rate of pay, due to illness or non-work related injury of the employee or an immediate family member.”

The employer notified the claimant that sick pay is paid specifically due to illness or non-work related injury of an employee or immediate family member.

Therefore, the Hearing Officer finds the claimant failed to prove by a preponderance of the evidence she is due the claimed sick pay under the written policy of the employer.

### **DISCUSSION**

The claimant has the burden of proof in these matters to provide proof by a preponderance of evidence that her assertions are true.

Pursuant to Lab 202.05 “Proof by a preponderance of evidence” means a demonstration by admissible evidence that a fact or legal conclusion is more probable than not.

The Hearing Officer finds the claimant failed to meet her burden in this claim.

## **DECISION**

Based on the testimony and evidence presented, as RSA 275:43 I requires that an employer pay all wages due an employee, as RSA 275:43 V considers vacation pay and sick pay to be wages, when due, if a matter of employment practice or policy, or both, and as this Department finds that the claimant failed to prove by a preponderance of the evidence that she is due any vacation pay or sick pay, it is hereby ruled that the Wage Claim is invalid.

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Melissa J. Delorey  
Hearing Officer

Date of Decision: September 16, 2015

MJD/kdc